

AMENDED IN ASSEMBLY JULY 13, 1999

AMENDED IN ASSEMBLY JULY 1, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 948

**Introduced by Senator Alarcon
(Principal coauthor: Senator Burton)**

February 25, 1999

An act to amend Sections 7060.7, 65009, 65589.5, 65915, and 65950 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 948, as amended, Alarcon. Affordable housing developments.

(1) Under existing law, public entities generally are prohibited from adopting any statute, ordinance, or regulation, or taking any administrative action, to compel the owner of residential real property to offer or to continue to offer accommodations in the property for rent or lease.

This bill would revise the statement of legislative intent in this law.

(2) Under existing law, the Planning Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year after accrual of the cause of action if it meets certain requirements, including that it is brought in support of the development of housing that meets the requirements for housing persons and families with low or moderate incomes. Where the action or proceeding

challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to specified provisions.

This bill would revise these provisions to include actions or proceedings to encourage or facilitate the development of housing and would include persons and families of very low and middle incomes. The bill would also provide that any action challenging the adequacy of a housing element pursuant to these provisions may be brought as specified above.

(3) Existing law requires local agencies to make specified findings before disapproving or conditionally approving certain housing development projects. Existing law also requires local agencies to provide developer incentives for the production of lower income housing units within a housing development if the developer meets specified requirements. Developer incentives include, among other things, a density bonus, as defined.

This bill would make specified changes in these findings relating to very low income, low-income, lower to moderate-income housing, middle-income households and the housing element of a general plan, respectively. The bill would revise the definition of “affordable to low- and moderate-income households” to include very low income households or middle-income households, as defined, and would add a definition for “disapprove the development project” to these provisions. The bill would also require the court in any action brought to enforce these provisions to order a local agency, within 60 days, to comply with these provisions and take action on the development projects that were disapproved on the basis of findings that were inadequate or lacked substantial evidence and to retain jurisdiction for this purpose. The bill would also revise the definitions of “density bonus” and “area median income” to mean very low or low- income households for purposes of these provisions.



Because these changes would impose new duties on local agencies, the bill would impose a state-mandated local program.

(4) Under the Permit Streamlining Act, a public agency that is the lead agency for a development project is required to approve or disapprove the project within 180 days from the date of certification by the lead agency of an environmental impact report if the report is prepared pursuant to specified provisions.

This bill, in addition, would reduce that period to 90 days if the development project is affordable to very low or low-income households and the project applicant has provided written notice to the lead agency that an application has been or will be made to a public or federal agency for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance and there is confirmation that the application was made prior to certification of the environmental impact report.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7060.7 of the Government Code
2 is amended to read:
3 7060.7. It is the intent of the Legislature in enacting
4 this chapter to supersede any holding or portion of any
5 holding in *Nash v. City of Santa Monica*, 37Cal.3d 97 to the

1 extent that the holding, or portion of the holding, conflicts
2 with this chapter, so as to permit landlords to go out of
3 business. However, this act is not otherwise intended to
4 do any of the following:

5 (1) Interfere with local governmental authority over
6 land use, including regulation of the ~~demolition~~ or
7 conversion of existing housing to condominiums or other
8 subdivided interests or to other nonresidential use
9 following its withdrawal from rent or lease under this
10 chapter.

11 ~~(2) Prohibit a single owner of a property and his or her~~
12 ~~immediate family members from occupying one or more~~
13 ~~of the units as a primary residence in a structure that has~~
14 ~~been withdrawn from rent or lease.~~

15 (2) *Preempt local or municipal environmental or land*
16 *use regulations, procedures, or controls that govern the*
17 *demolition and redevelopment of residential property.*

18 (3) Override procedural protections designed to
19 prevent abuse of the right to evict tenants.

20 (4) Permit an owner to withdraw from rent or lease
21 less than all of the accommodations, as defined by
22 paragraph (1) or (2) of subdivision (b) of Section 7060.

23 (5) Grant to any public entity any power which it does
24 not possess independent of this chapter to control or
25 establish a system of control on the price at which
26 accommodations may be offered for rent or lease, or to
27 diminish any such power which that public entity may
28 possess, except as specifically provided in this chapter.

29 (6) Alter in any way either Section 65863.7 relating to
30 the withdrawal of accommodations which comprise a
31 mobilehome park from rent or lease or subdivision (f) of
32 Section 798.56 of the Civil Code relating to a change of use
33 of a mobilehome park.

34 SEC. 2. Section 65009 of the Government Code is
35 amended to read:

36 65009. (a) (1) The Legislature finds and declares
37 that there currently is a housing crisis in California and it
38 is essential to reduce delays and restraints upon
39 expeditiously completing housing projects.

1 (2) The Legislature further finds and declares that a
2 legal action challenging a decision of a city, county, or city
3 and county has a chilling effect on the confidence with
4 which property owners and local governments can
5 proceed with projects. Legal actions filed to attack,
6 review, set aside, void, or annul a decision of a city,
7 county, or city and county pursuant to this division can
8 prevent the completion of needed developments even
9 though the projects have received required
10 governmental approvals.

11 (3) The purpose of this section is to provide certainty
12 for property owners and local governments regarding
13 decisions made pursuant to this division.

14 (b) (1) In an action or proceeding to attack, review,
15 set aside, void, or annul a finding, determination, or
16 decision of a public agency made pursuant to this title at
17 a properly noticed public hearing, the issues raised shall
18 be limited to those raised in the public hearing or in
19 written correspondence delivered to the public agency
20 prior to, or at, the public hearing, except where the court
21 finds either of the following:

22 (A) The issue could not have been raised at the public
23 hearing by persons exercising reasonable diligence.

24 (B) The body conducting the public hearing
25 prevented the issue from being raised at the public
26 hearing.

27 (2) If a public agency desires the provisions of this
28 subdivision to apply to a matter, it shall include in any
29 public notice issued pursuant to this title a notice
30 substantially stating all of the following: “If you challenge
31 the (nature of the proposed action) in court, you may be
32 limited to raising only those issues you or someone else
33 raised at the public hearing described in this notice, or in
34 written correspondence delivered to the (public entity
35 conducting the hearing) at, or prior to, the public
36 hearing.”

37 (3) The application of this subdivision to causes of
38 action brought pursuant to subdivision (d) applies only to
39 the final action taken in response to the notice to the city
40 or county clerk. If no final action is taken, then the issue

1 raised in the cause of action brought pursuant to
2 subdivision (d) shall be limited to those matters
3 presented at a properly noticed public hearing or to those
4 matters specified in the notice given to the city or county
5 clerk pursuant to subdivision (d), or both.

6 (c) (1) Except as provided in ~~subdivisions (d) and (i)~~
7 *subdivision (d)*, no action or proceeding shall be
8 maintained in any of the following cases by any person
9 unless the action or proceeding is commenced and
10 service is made on the legislative body within 90 days
11 after the legislative body's decision:

12 (A) To attack, review, set aside, void, or annul the
13 decision of a legislative body to adopt or amend a general
14 or specific plan. This paragraph does not apply where an
15 action is brought based upon the complete absence of a
16 general plan or a mandatory element thereof, but does
17 apply to an action attacking a general plan or mandatory
18 element thereof on the basis that it is inadequate.

19 (B) To attack, review, set aside, void, or annul the
20 decision of a legislative body to adopt or amend a zoning
21 ordinance.

22 (C) To determine the reasonableness, legality, or
23 validity of any decision to adopt or amend any regulation
24 attached to a specific plan.

25 (D) To attack, review, set aside, void, or annul the
26 decision of a legislative body to adopt, amend, or modify
27 a development agreement. An action or proceeding to
28 attack, review, set aside, void, or annul the decisions of a
29 legislative body to adopt, amend, or modify a
30 development agreement shall only extend to the specific
31 portion of the development agreement that is the subject
32 of the adoption, amendment, or modification. This
33 paragraph applies to development agreements,
34 amendments, and modifications adopted on or after
35 January 1, 1996.

36 (E) To attack, review, set aside, void, or annul any
37 decision on the matters listed in Sections 65901 and 65903,
38 or to determine the reasonableness, legality, or validity of
39 any condition attached to a variance, conditional use
40 permit, or any other permit.



(F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in paragraphs (1), (2), (3), (4), and (5).

(2) In the case of an action or proceeding challenging the adoption or revision of a housing element pursuant to this subdivision, the action or proceeding may, in addition, be maintained if it is commenced and service is made on the legislative body within 60 days following the date that the Department of Housing and Community Development reports its findings pursuant to subdivision (h) of Section 65585.

(d) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1) It is brought ~~generally~~ in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(2) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of this division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913).

A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or county clerk by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after

1 notice is filed or the legislative body takes a final action
2 in response to the notice, whichever occurs first. A notice
3 or cause of action brought by one party pursuant to this
4 subdivision shall not bar filing of a notice and initiation of
5 a cause of action by any other party.

6 (e) Upon the expiration of the time limits provided for
7 in this section, all persons are barred from any further
8 action or proceeding.

9 (f) Notwithstanding Sections 65700 and 65803, or any
10 other provision of law, this section shall apply to charter
11 cities.

12 (g) Except as provided in subdivision (d), this section
13 shall not affect any law prescribing or authorizing a
14 shorter period of limitation than that specified herein.

15 (h) Except as provided in paragraph (4) of subdivision
16 (c), this section shall be applicable to those decisions of
17 the legislative body of a city, county, or city and county
18 made pursuant to this division on or after January 1, 1984.

19 SEC. 3. Section 65589.5 of the Government Code is
20 amended to read:

21 65589.5. (a) The Legislature finds all of the following:

22 (1) The lack of affordable housing is a critical problem
23 which threatens the economic, environmental, and social
24 quality of life in California.

25 (2) California housing has become the most expensive
26 in the nation. The excessive cost of the state's housing
27 supply is partially caused by activities and policies of
28 many local governments which limit the approval of
29 affordable housing, increase the cost of land for affordable
30 housing, and require that high fees and exactions be paid
31 by producers of potentially affordable housing.

32 (3) Among the consequences of those actions are
33 discrimination against low-income and minority
34 households, lack of housing to support employment
35 growth, imbalance in jobs and housing, reduced mobility,
36 urban sprawl, excessive commuting, and air quality
37 deterioration.

38 (4) Many local governments do not give adequate
39 attention to the economic, environmental, and social
40 costs of decisions which result in disapproval of affordable

1 housing projects, reduction in density of affordable
2 housing projects, and excessive standards for affordable
3 housing projects.

4 (b) It is the policy of the state that a local government
5 not reject or make infeasible affordable housing
6 developments which contribute to meeting the housing
7 need determined pursuant to this article without a
8 thorough analysis of the economic, social, and
9 environmental effects of the action and without meeting
10 the provisions of subdivision (d).

11 (c) The Legislature also recognizes that premature
12 and unnecessary development of agricultural lands to
13 urban uses continues to have adverse effects on the
14 availability of those lands for food and fiber production
15 and on the economy of the state. Furthermore, it is the
16 policy of the state that development should be guided
17 away from prime agricultural lands; therefore, in
18 implementing this section, local jurisdictions should
19 encourage, to the maximum extent practicable, in filling
20 existing urban areas.

21 (d) A local agency shall not disapprove a housing
22 development project affordable to very low, low- or
23 moderate-income households or condition approval in a
24 manner which renders the project infeasible for
25 development for the use of very low, low- or
26 moderate-income households unless it makes written
27 findings, based upon substantial evidence in the record,
28 as to one of the following:

29 (1) The jurisdiction has adopted a housing element
30 pursuant to this article that has been revised in
31 accordance with Section 65588 and that is in substantial
32 compliance with this article, and the development
33 project is not needed for the jurisdiction to meet its share
34 of the regional housing need for very low, low-, or
35 moderate-income housing.

36 (2) The development project as proposed would have
37 a specific, adverse impact upon the public health or
38 safety, and there is no feasible method to satisfactorily
39 mitigate or avoid the specific adverse impact without
40 rendering the development unaffordable to low- and

1 moderate-income households. As used in this paragraph,
2 a “specific, adverse impact” means a significant,
3 quantifiable, direct, and unavoidable impact, based on
4 objective, identified written public health or safety
5 standards, policies, or conditions as they existed on the
6 date the application was deemed complete.

7 (3) The denial of the project or imposition of
8 conditions is required in order to comply with specific
9 state or federal law, and there is no feasible method to
10 comply without rendering the development
11 unaffordable to low- and moderate-income households.

12 (4) Approval of the development project would
13 increase the concentration of lower income households in
14 a neighborhood that already has a disproportionately
15 high number of lower income households and there is no
16 feasible method of approving the development at a
17 different site, including those sites identified pursuant to
18 paragraph (1) of subdivision (c) of Section 65583, without
19 rendering the development unaffordable to low- and
20 moderate-income households.

21 (5) The development project is proposed on land
22 zoned for agriculture or resource preservation which is
23 surrounded on at least two sides by land being used for
24 agricultural or resource preservation purposes, or which
25 does not have adequate water or wastewater facilities to
26 serve the project.

27 (6) The development project is inconsistent with both
28 the jurisdiction’s zoning ordinance and general plan land
29 use designation as specified in any element of the general
30 plan as it existed on the date the application was deemed
31 complete, and the jurisdiction has adopted a housing
32 element pursuant to this article.

33 (e) Nothing in this section shall be construed to relieve
34 the local agency from complying with the Congestion
35 Management Program required by Chapter 2.6
36 (commencing with Section 65088) of Division 1 of Title
37 7 or the California Coastal Act (Division 20 (commencing
38 with Section 30000) of the Public Resources Code).
39 Neither shall anything in this section be construed to
40 relieve the local agency from making one or more of the

1 findings required pursuant to Section 21081 of the Public
2 Resources Code or otherwise complying with the
3 California Environmental Quality Act (Division 13
4 (commencing with Section 21000) of the Public
5 Resources Code).

6 (f) Nothing in this section shall be construed to
7 prohibit a local agency from requiring the development
8 project to comply with written development standards,
9 conditions, and policies appropriate to, and consistent
10 with, meeting the quantified objectives relative to the
11 development of housing, as required in the housing
12 element pursuant to subdivision (b) of Section 65583.
13 Nothing in this section shall be construed to prohibit a
14 local agency from imposing fees and other exactions
15 otherwise authorized by law which are essential to
16 provide necessary public services and facilities to the
17 development project.

18 (g) This section shall be applicable to charter cities
19 because the Legislature finds that the lack of affordable
20 housing is a critical statewide problem.

21 (h) The following definitions apply for the purposes of
22 this section:

23 (1) “Feasible” means capable of being accomplished
24 in a successful manner within a reasonable period of time,
25 taking into account economic, environmental, social, and
26 technological factors.

27 (2) “Affordable to very low, low-, or moderate-income
28 households” means that either (A) at least 20 percent of
29 the total units shall be sold or rented to lower income
30 households, as defined in Section 50079.5 of the Health
31 and Safety Code, or (B) 100 percent of the units shall be
32 sold or rented to moderate-income households as defined
33 in Section 50093 of the Health and Safety Code, or
34 middle-income households, as defined in Section 65008 of
35 this code. Housing units targeted for lower income
36 households shall be made available at a monthly housing
37 cost that does not exceed 30 percent of 60 percent of area
38 median income with adjustments for household size
39 made in accordance with the adjustment factors on which
40 the lower income eligibility limits are based. Housing

1 units targeted for persons and families of moderate
2 income shall be made available at a monthly housing cost
3 that does not exceed 30 percent of 100 percent of area
4 median income with adjustments for household size
5 made in accordance with the adjustment factors on which
6 the moderate income eligibility limits are based.

7 (3) “Area median income” shall mean area median
8 income as periodically established by the Department of
9 Housing and Community Development pursuant to
10 Section 50093 of the Health and Safety Code. The
11 developer shall provide sufficient legal commitments to
12 ensure continued availability of units for very low or
13 low-income households in accordance with the provisions
14 of this subdivision for 30 years.

15 (4) “Neighborhood” means a planning area
16 commonly identified as such in a community’s planning
17 documents, and identified as a neighborhood by the
18 individuals residing and working within the
19 neighborhood. Documentation demonstrating that the
20 area meets the definition of neighborhood may include a
21 map prepared for planning purposes which lists the name
22 and boundaries of the neighborhood.

23 (5) “Disapprove the development project” includes
24 any instance in which a local agency does either of the
25 following:

26 (A) Votes on a proposed housing development project
27 application and the application is disapproved.

28 (B) Fails to comply with the time periods specified in
29 subparagraph (B) of paragraph (1) of subdivision (a) of
30 Section 65950. An extension of time pursuant to Article 5
31 (commencing with Section 65950) shall be deemed to be
32 an extension of time pursuant to this paragraph.

33 (i) If any city, county, or city and county denies
34 approval or imposes restrictions, including a reduction of
35 allowable densities or the percentage of a lot which may
36 be occupied by a building or structure under the
37 applicable planning and zoning in force at the time the
38 application is deemed complete pursuant to Section
39 65943, which have a substantial adverse effect on the
40 viability or affordability of a housing development

1 affordable to very low, low-, or moderate-income
2 households, and the denial of the development or the
3 imposition of restrictions on the development is the
4 subject of a court action which challenges the denial, then
5 the burden of proof shall be on the local legislative body
6 to show that its decision is consistent with the findings as
7 described in subdivision (d) and that the findings are
8 supported by substantial evidence in the record.

9 (j) When a proposed housing development project
10 complies with applicable, objective general plan and
11 zoning standards and criteria in effect at the time that the
12 housing development project's application is determined
13 to be complete, but the local agency proposes to
14 disapprove the project or to approve it upon the
15 condition that the project be developed at a lower
16 density, the local agency shall base its decision regarding
17 the proposed housing development project upon written
18 findings supported by substantial evidence on the record
19 that both of the following conditions exist:

20 (1) The housing development project would have a
21 specific, adverse impact upon the public health or safety
22 unless the project is disapproved or approved upon the
23 condition that the project be developed at a lower
24 density. As used in this paragraph, a "specific, adverse
25 impact" means a significant, quantifiable, direct, and
26 unavoidable impact, based on objective, identified
27 written public health or safety standards, policies, or
28 conditions as they existed on the date the application was
29 deemed complete.

30 (2) There is no feasible method to satisfactorily
31 mitigate or avoid the adverse impact identified pursuant
32 to paragraph (1), other than the disapproval of the
33 housing development project or the approval of the
34 project upon the condition that it be developed at a lower
35 density.

36 (k) If in any action brought to enforce the provisions
37 of this section, a court finds that the local agency
38 disapproved a project or conditioned its approval in a
39 manner rendering it infeasible for the development of
40 very low, low-, or moderate-income households without

1 properly making the findings required by this section or
2 without making sufficient findings supported by
3 substantial evidence, the court shall issue an order or
4 judgment compelling compliance with this section within
5 60 days, including, but not limited to, an order that the
6 local agency take action on the development project. The
7 court shall retain jurisdiction to ensure that its order or
8 judgment is carried out. If the court determines that its
9 order or judgment has not been carried out within 60
10 days, the court may issue further orders as provided by
11 law to ensure that the purposes and policies of this section
12 are fulfilled.

13 (l) In any action, the record of the proceedings before
14 the local agency shall be filed as expeditiously as possible
15 and, notwithstanding Section 1094.6 of the Code of Civil
16 Procedure, all or part of the record may be filed (1) by
17 the petitioner with the petition or petitioner's points and
18 authorities, (2) by the respondent with respondent's
19 points and authorities, (3) after payment of costs by the
20 petitioner, or (4) as otherwise directed by the court. If the
21 expense of preparing the record has been borne by the
22 petitioner and the petitioner is the prevailing party, the
23 expense shall be taxable as costs.

24 SEC. 4. Section 65915 of the Government Code is
25 amended to read:

26 65915. (a) When a developer of housing proposes a
27 housing development within the jurisdiction of the local
28 government, the city, county, or city and county shall
29 provide the developer incentives for the production of
30 lower income housing units within the development if
31 the developer meets the requirements set forth in
32 subdivisions (b) and (c). The city, county, or city and
33 county shall adopt an ordinance which shall specify the
34 method of providing developer incentives.

35 (b) When a developer of housing agrees or proposes to
36 construct at least (1) 20 percent of the total units of a
37 housing development for lower income households, as
38 defined in Section 50079.5 of the Health and Safety Code,
39 or (2) 10 percent of the total units of a housing
40 development for very low income households, as defined

1 in Section 50105 of the Health and Safety Code, or (3) 50
2 percent of the total dwelling units of a housing
3 development for qualifying residents, as defined in
4 Section 51.3 of the Civil Code, a city, county, or city and
5 county shall either (1) grant a density bonus and at least
6 one of the concessions or incentives identified in
7 subdivision (h) unless the city, county, or city and county
8 makes a written finding that the additional concession or
9 incentive is not required in order to provide for
10 affordable housing costs as defined in Section 50052.5 of
11 the Health and Safety Code or for rents for the targeted
12 units to be set as specified in subdivision (c), or (2)
13 provide other incentives of equivalent financial value
14 based upon the land cost per dwelling unit.

15 (c) A developer shall agree to and the city, county, or
16 city and county shall ensure continued affordability of all
17 lower income density bonus units for 30 years or a longer
18 period of time if required by the construction or
19 mortgage financing assistance program, mortgage
20 insurance program, or rental subsidy program. Those
21 units targeted for lower income households, as defined in
22 Section 50079.5 of the Health and Safety Code, shall be
23 affordable at a rent that does not exceed 30 percent of 60
24 percent of area median income. Those units targeted for
25 very low income households, as defined in Section 50105
26 of the Health and Safety Code, shall be affordable at a rent
27 that does not exceed 30 percent of 50 percent of area
28 median income. If a city, county, or city and county does
29 not grant at least one additional concession or incentive
30 pursuant to paragraph (1) of subdivision (b), the
31 developer shall agree to and the city, county, or city and
32 county shall ensure continued affordability for 10 years of
33 all lower income housing units receiving a density bonus.

34 (d) A developer may submit to a city, county, or city
35 and county a preliminary proposal for the development
36 of housing pursuant to this section prior to the submittal
37 of any formal requests for general plan amendments,
38 zoning amendments, or subdivision map approvals. The
39 city, county, or city and county shall, within 90 days of
40 receipt of a written proposal, notify the housing

1 developer in writing of the procedures under which it
2 will comply with this section. The city, county, or city and
3 county shall establish procedures for carrying out this
4 section, which shall include legislative body approval of
5 the means of compliance with this section. The city,
6 county, or city and county shall also establish procedures
7 for waiving or modifying development and zoning
8 standards which would otherwise inhibit the utilization of
9 the density bonus on specific sites. These procedures shall
10 include, but not be limited to, such items as minimum lot
11 size, side yard setbacks, and placement of public works
12 improvements.

13 (e) The housing developer shall show that the waiver
14 or modification is necessary to make the housing units
15 economically feasible.

16 (f) For the purposes of this chapter, “density bonus”
17 means a density increase of at least 25 percent, unless a
18 lesser percentage is elected by the developer, over the
19 otherwise maximum allowable residential density under
20 the applicable zoning ordinance and land use element of
21 the general plan as of the date of application by the
22 developer to the city, county, or city and county. The
23 granting of a density bonus shall not be interpreted, in
24 and of itself, to require a general plan amendment,
25 zoning change, or other discretionary approval. The
26 density bonus shall not be included when determining
27 the number of housing units which is equal to 10 or 20
28 percent of the total. The density bonus shall apply to
29 housing developments consisting of five or more dwelling
30 units.

31 (g) “Housing development,” as used in this section,
32 means one or more groups of projects for residential units
33 constructed in the planned development of a city, county,
34 or city and county. For purposes of calculating a density
35 bonus, the residential units do not have to be based upon
36 individual subdivision maps or parcels. The density bonus
37 shall be permitted in geographic areas of the housing
38 development other than the areas where the units for the
39 lower income households are located.



(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 5. Section 65950 of the Government Code is amended to read:

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove

1 the project within whichever of the following periods is
2 applicable:

3 (1) One hundred eighty days from the date of
4 certification by the lead agency of the environmental
5 impact report if an environmental impact report is
6 prepared pursuant to Section 21100 or 21151 of the Public
7 Resources Code for the development project.

8 (2) Ninety days from the date of certification by the
9 lead agency of the environmental impact report if an
10 environmental impact report is prepared pursuant to
11 Section 21100 or 21151 of the Public Resources Code for
12 the development project and all of the following
13 conditions are met:

14 (A) The development project is affordable to very low
15 or low-income households, as defined by Sections 50105
16 and 50079.5 of the Health and Safety Code, respectively.

17 (B) Prior to the application being deemed complete
18 for the development project pursuant to Article 3
19 (commencing with Section 65940), the lead agency
20 received written notice from the project applicant that
21 an application has been made or will be made for an
22 allocation or commitment of financing, tax credits, bond
23 authority, or other financial assistance from a public
24 agency or federal agency, and the notice specifies the
25 financial assistance that has been applied for or will be
26 applied for and the deadline for application for that
27 assistance, the requirement that one of the approvals of
28 the development project by the lead agency is a
29 prerequisite to the application for or approval of the
30 application for financial assistance, and that the financial
31 assistance is necessary for the project to be affordable as
32 required pursuant to subparagraph (A).

33 (C) There is confirmation that the application has
34 been made to the public agency or federal agency prior
35 to certification of the environmental impact report.

36 (3) Sixty days from the date of adoption by the lead
37 agency of the negative declaration if a negative
38 declaration is completed and adopted for the
39 development project.

1 (4) Sixty days from the determination by the lead
2 agency that the project is exempt from the California
3 Environmental Quality Act (Division 13 (commencing
4 with Section 21000) of the Public Resources Code) if the
5 project is exempt from the California Environmental
6 Quality Act.

7 (b) Nothing in this section precludes a project
8 applicant and a public agency from mutually agreeing in
9 writing to an extension of any time limit provided by this
10 section pursuant to Section 65957.

11 (c) For purposes of this section, “lead agency” and
12 “negative declaration” shall have the same meaning as
13 those terms are defined in Sections 21067 and 21064 of the
14 Public Resources Code, respectively.

15 SEC. 6. The Legislature finds and declares both of the
16 following:

17 (a) The amendments made by this act to subdivision
18 (c) of Section 65009 of the Government Code, excluding
19 the portion of the amendment related to middle-income
20 households, are declaratory of existing law.

21 (b) The amendments made by this act to Section 65915
22 of the Government Code are declaratory of existing law.

23 SEC. 7. Notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains costs mandated by the
26 state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.